



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

ELP

Docket No. 5402-99  
17 July 2000

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[REDACTED]

Ref: (a) 10 U.S.C.1552

Encl: (1) DD Form 149 w/attachments  
(2) Case Summary  
(3) Subject's Naval Record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Marine Corps, applied to this Board requesting, in effect, that his record be corrected to show a more favorable type of discharge than the discharge under other than honorable conditions on 31 March 1983, and his reenlistment code be changed.

2. The Board, consisting of Messrs. Pfeiffer and Morgan and Ms. Humberd reviewed Petitioner's allegations of error and injustice on 12 July 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that Petitioner's application to the Board was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Marine Corps on 24 June 1981 for three years. The record reflects he was advanced to PFC and during the month of May 1982 his performance was recognized by two meritorious masts.

d. Petitioner served without incident until 17 August 1982 when he received nonjudicial punishment for a 24 day period of unauthorized absence (UA). Punishment imposed consisted of reduction in rank to PVT (E-1) and forfeitures of \$275 per month for two months.

e. Petitioner served without further incident until February 1983 when he began a series of three UAs totalling about 17 days, from 3-8 February, 8-11 February and 14-23 February 1983.

f. On 31 March 1983, Petitioner was discharged under other than honorable conditions by reason of "conduct triable by court-martial (request for good of the service)." The discharge processing documentation is not on file in the record.

g. A Marine may be separated upon request in lieu of trial by courts-martial if charges have been preferred with respect to an offense for which a punitive discharge is authorized and it is determined that the Marine is unqualified for further military service. The escalator clause at section B of paragraph 127C of the Manual for Courts-martial (MCM), 1969, may be used to determine if a punitive discharge is authorized if the charges have been referred to a court-martial authorized to adjudge a punitive discharge.

h. Petitioner's father has submitted a statement to the effect that shortly after his son arrived at his new duty station, he began receiving letters informing him of his wife's unfaithfulness. As a result, the his son's performance deteriorated, the marriage ended in divorce, and he was subsequently discharged.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial favorable action. In this regard, the Board notes Petitioner had only one NJP in 21 months of service and the multiple UAs which led to his discharge totalled only 17 days. The Board notes

that a UA must be of 30 days or more to authorize a punitive discharge. However, the esclator clause in the MCM provides that individuals with multiple UAs of less than 30 days may also receive a punitive discharge. Despite that fact, the Board believes Petitioner would not have received a punitive discharge had he gone to trial given the mitigating circumstances presented by his father. The Board notes that young Marines with marital problems often are easily persuaded to accept separation rather than face a court-martial and risk a punitive discharge. In such cases, the Board believes individuals often leave without being fully aware of all the options available to them. The Board believes that Petitioner's discharge under other than honorable conditions was too harsh for three brief UAs and that it would appropriate and just to recharacterize his discharge to general under honorable conditions.

Regulations authorize the assignment of an RE-4 reenlistment code to individuals discharged for conduct triable by court-martial. Since he received the benefit of his bargain with the Marine Corps and was treated no differently than others discharged under similar circumstances, the Board concluded that the reenlistment code was proper and no change is warranted.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge by reason of "conduct triable by court-martial" on 31 March 1983 vice the discharge under other than honorable conditions issued on that date.

b. That no further relief be granted.

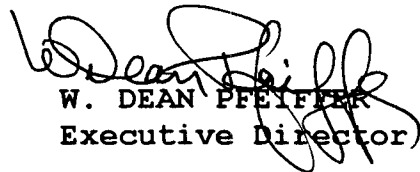
c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

  
ALAN E. GOLDSMITH  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

  
W. DEAN PFEIFFER  
Executive Director